

TRANSPORTATION OF JUVENILE TAKEN INTO CUSTODY

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House Bill 4887 as enrolled
Vetoed by the Governor
Sponsor: Rep. Mike Mueller
House Committee: Judiciary
Senate Committee: Judiciary and Public Safety
Complete to 2-8-23

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: House Bill 4887 would amend Chapter XIIA of the Probate Code, known as the juvenile code, to allow a juvenile taken into custody at the same time as an adult to be transported with the adult to the appropriate location under certain circumstances.

FISCAL IMPACT: House Bill 4887 would not have a significant fiscal impact on the Department of Health and Human Services. Under the provisions of the bill, counties may see decreased costs in their county child care funds related to the transportation of juvenile offenders with adult offenders. The amount of any savings gained is indeterminate and would depend upon the number of juveniles no longer having to be transported separately from adult offenders.

THE APPARENT PROBLEM:

In general, state and federal laws require that juveniles have a “sight and sound” separation from adults when detained by law enforcement officers or when incarcerated. Michigan’s juvenile code extends the separation principle even to transporting a juvenile with adults. Apparently, this is not practicable in all situations, especially in rural areas where there may only be a couple of patrol cars on duty across a county. For example, a police officer may pull a car over on suspicion of drunk driving, only to find a minor in the car who may be possession of an illegal drug. Currently, in such a scenario, either an officer must stay on the side of the road with the adult while the other officer transports the juvenile to the appropriate place for processing, or all must wait until another patrol car is available to transport the adult and juvenile separately. This can be particularly dangerous as it increases the risk to those waiting on the side of the road of being struck by a passing car, especially in inclement weather or after dark, or of having other persons arrive on the scene and interfere with the detention, or do worse. Legislation has been offered to address the concern.

THE CONTENT OF THE BILL:

The juvenile code requires a juvenile who is taken into custody or detained to be separated from adults in custody. As of October 1, 2021, when 2019 PA 102 took effect, this requirement applies to a juvenile under the age of 18. Specifically, the code prohibits a juvenile from being confined in any police station, prison, jail, lock-up, or reformatory *or transported with*, or compelled or permitted to associate or mingle with, criminal or dissolute persons. An exception is made for a juvenile who is at least 15 years old and who poses a safety threat to other juveniles. Those juveniles may be placed in a jail or other place of detention for adults, but only in a room or ward separate from adults and for not more than 30 days (unless a longer detention is necessary for the service of process).

The bill would allow a juvenile to be transported with an adult if all of the following apply:

- The juvenile is at least 16 years of age.
- The adult is 25 years old or younger.
- The juvenile and adult are taken into custody at the same time.
- The juvenile and adult are taken into custody for the same offense or both occupied the same vehicle at the time the offense was committed.
- The juvenile is taken directly to the appropriate location and then is separated from the adult at the earliest available time in accordance with the procedure described above.

The bill would take effect 90 days after being enacted.

MCL 712A.16

ARGUMENTS:

For:

There are situations in which multiple individuals must be transported to a law enforcement agency to be interviewed regarding a crime or processed if arrested. This can be problematic if one or more juveniles (those 17 years of age and younger) are among those needing transport, as current law requires separate vehicles for juveniles and adults when detained or placed in custody. The bill would create a narrow exception from the current provision to apply when individuals close in age are taken into custody at the same time and for the same offense (for example, breaking and entering or assault and battery) or are in the same vehicle when the offense occurred. (The bill would apply only to juveniles who are 16 or 17 years old and only when in the company of adults who are 25 years old or younger.) The bill also would require the juvenile to be taken directly to the appropriate facility and separated from the adult as soon as possible. With its narrow scope, the bill should accomplish its purpose of keeping officers and juveniles safe from hazards presented when forced to wait on the side of the road or in a crowded or secluded area until additional patrol cars are free to transport all involved. Note that transporting juvenile and adult co-defendants in the same vehicle would not be required, but would be allowed as needed, at the discretion of the officer.

Further, as long as the juvenile is held “non-securely,” such as not in a locked facility, it would appear that the exemption created by the bill would not violate the federal Juvenile Justice and Delinquency Prevention Act (JJDP), which, among other things, prohibits sight and sound contact with adult inmates when youths are either detained or confined for any length of time.

Against:

Some concerns may remain as to implementation of the bill’s exemption to the prohibition on transporting juveniles and adults under custody in the same vehicle. For example, especially in the case of human trafficking, whether labor trafficking or the commercial sex trade, it may be difficult to establish whether an individual is at least 16 or 17, as many trafficked youth look older, and handlers are often close in age to those being trafficked and so may not be friends or co-conspirators. The transport of adults and youth in human trafficking situations can provide further opportunity for the victims to be intimidated and threatened by their abusers or older gang members and thus may impede an investigation or prolong victimization if returned to the traffickers. This could be particularly problematic in cases in which family members are

involved in trafficking younger relatives, as well as in situations involving younger members of a gang.

Against:

Governor Whitmer vetoed the bill on July 1, 2022, and gave the following reasons:

- Transporting multiple offenders together can pose risks, regardless of the ages of the offenders, but even more so when one is a juvenile.
- Juveniles can suffer harm by “violence and threats of violence,” and efforts by law enforcement “to conduct criminal investigations without interference” can be impaired when an older offender is transported at the same time.
- The “bill is out of step with national standards on the detention of juveniles and adults.” The governor pointed out that the federal Juvenile Justice and Delinquency Prevention Act “prohibits law enforcement from detaining juveniles alongside adults in a secure facility.”
- The “bill opens the state to legal liability.” As an example, the governor wrote that a “law enforcement officer charged with supervising juveniles alongside adults may later be put in the difficult position of defending against a claim of failure to protect a juvenile. As recently as 2020, Michigan agreed to pay an \$80 million settlement related to incarcerated teenagers’ claims of sexual abuse in adult prisons. This bill invites similar litigation at taxpayer expense.”

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.